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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,704	07/05/2001	Ricky Gene Schnellmann	D6305	3503

7590

03/20/2002

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EXAMINER

COOK, REBECCA

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 03/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/899,704

Applicant(s)

Schnellmann et al

Examiner

Rebecca Cook

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1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb 21, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above, claim(s) 5-10 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 11-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 20) ☐ Other:

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Applicant's election with traverse of Group I, claims 1-4, 11-14 in Paper No. 6 is acknowledged. The traversal is on the ground(s) that the Invention of Group IV is a specific embodiment of the method of Group I and that the compositions of Groups II and II are different aspects of the same embodiment and that a search of the prior art would reveal art related to all four Groups. This is not found persuasive because the search required for the method inventions is not required for each of the composition inventions.

The requirement is still deemed proper and is therefore made FINAL.

However, Groups I and IV have been rejoined as the search required for them is not an undue burden on the examiner. Claims 1-4, 11-14 and 15-16 are being examined.

In view of applicants' argument the requirement under 35 U.S.C. 121 to elect a single disclosed cellular function is withdrawn.

Claims 1, 3-4, 11-13, 15-16 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the cascade of functions in claims 2 and 14, does not reasonably provide enablement for any and all cell functions. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. Amending claims 1, 11 and 15 to recite the cascade of cellular functions of claims 2 and 14 and canceling claims 2 and 14 will overcome this rejection.

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Claims 1-4, 11-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

✓ It is not clear whether the method of claims 1-4 is in vivo or in vivo.

— Claims 1-4 and 15-16 do not recite an effective amount.

In claims 11 and 15 the word "such" is confusing as to the scope of its intent.

Furthermore, there is no antecedent in the claims for the word "treatment. Amending the claims to recite "said method" will overcome this rejection.

In claim 12 the use of the word "and" more than once renders the Markush recitation of injury confusing.

There is no support in claim 15 for the recitation "ophthalmic composition of claim 5," since said claim is withdrawn.

In claim 16 the Markush list of intended injury and diseases is confusing. It is not clear if the recitations in parentheses are intended to further limit the claim and alkali burn is an acute injury. Furthermore, there is no antecedent basis in claims 15 and 16 for the recitation "eye diseases."

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over 4,711,780 (columns 1-2, among others), 5,230,996 (column 2, among others), Saika et al (abstract), Nowak et al (1997) (abstract) or Nowak et al (2000) (2000) alone or in combination.

Each reference discloses that ascorbic acid phosphate and ascorbic acid promote recovery of cellular functions and wound healing such as proliferation following injury, including eye injury, caused by a variety of conditions, including toxic substances. The claims differ over the references in reciting ascorbic acid concentration and a specific toxic substance. However, once a method of using a compound is known to treat injury no unobviousness is seen in an injury caused by a specific toxic substance. Furthermore, it is within the skill of the artisan to determine the optimum concentration.

Applicants are requested to update the continuing information and clarify the benefit claimed to 60/212,224, since it is inconsistent with PTO records.

The draftsman has approved the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Cook whose telephone number is (703) 308-4724. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 38-4725. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 3080-1235.

March 19, 2002

  
REBECCA COOK  
PRIMARY EXAMINER  
GROUP 1200